No. 1036

In the Supreme Court of the United States

OCTOBER TERM, 1941

CHRYSLER CORPORATION, DE SOTO MOTOR CORPORATION, PLYMOUTH MOTOR CORPORATION, DODGE BROTHERS CORPORATION, AND CHRYSLER SALES CORPORATION, APPELLANTS

v.

THE UNITED STATES OF AMERICA

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA

BRIEF FOR THE UNITED STATES

INDEX

456137—42——1

CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 1036

CHRYSLER CORPORATION, DE SOTO MOTOR CORPORATION, PLYMOUTH MOTOR CORPORATION, DODGE BROTHERS CORPORATION, AND CHRYSLER SALES CORPORATION, APPELLANTS

v.

THE UNITED STATES OF AMERICA

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA

BRIEF FOR THE UNITED STATES

OPINION BELOW

The district court did not render any opinion. Its findings of fact and conclusions of law are found at R. 155–156.

JURISDICTION

The decree of the district court was entered on February 16, 1942 (R. 156). Petition for appeal was filed on February 18, 1942, and was allowed on the same day (R. 157, 161).

The jurisdiction of this Court is conferred by Section 2 of the Act of February 11, 1903, 32 Stat. 823, 15 U. S. C., sec. 29, and Section 238 of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 931, 936, 28 U. S. C., sec. 345. Probable jurisdiction was noted on March 16, 1942.

QUESTION PRESENTED

Whether the district court was warranted in changing a consent decree, which prohibited Chrysler Corporation from acquiring any interest in a finance company, to continue the prohibition through 1942.

STATUTE INVOLVED

The Act of July 2, 1890, 26 Stat. 209, known as the Sherman Act, as amended by the Act of August 17, 1937, 50 Stat. 693, provides in part as follows:

> SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal * * *. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor * * * (15 U. S. C., sec. 1).
>
> SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with

foreign nations, shall be deemed guilty of a misdemeanor * * * (15 U. S. C., sec. 2).

* * * * * *

SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. * * *

STATEMENT

SUMMARY STATEMENT OF THE PROCEEDINGS

This is an appeal from the decree of the district court entered on February 16, 1942, modifying a decree entered with the consent of the parties on November 15, 1938, in an equity proceeding brought by the United States charging the defendants therein with being parties to a conspiracy in restraint of interstate commerce in violation of the Sherman Act. The defendants against whom this decree was entered are the present appellants (Chrysler Corporation and four subsidiaries engaged in marketing cars manufactured by Chrysler) and Commercial Credit Company and certain of its subsidiaries. Commercial Credit is a finance company[1] which long had been affiliated with

[1] As used in the decree (R. 26) and as used herein, the words "finance company" mean a company engaged chiefly in financing wholesale or retail purchases of automobiles.

Chrysler, but this affiliation had been severed early in 1938 when Chrysler disposed of its Commercial Credit stock and terminated its preferential contracts with that company (R. 16–17, 19–20).

The decree of November 15, 1938, in addition to many other injunctive provisions, prohibits Chrysler from acquiring an interest in any finance company, either by making loans or by purchasing securities (R. 40). Following this prohibition, set forth in the first paragraph of ¶ 12 of the decree, the second paragraph of ¶ 12 provides (R. 40–41):

> It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1941, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the manufacturer [Chrysler] from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. * * *

In December 1940 the district court, on the motion of the Government and after hearing argument by counsel, entered an order modifying the decree by changing the date in the above provision from January 1, 1941, to January 1, 1942 (R. 56–57). The effect of this change was to prevent the bar against Chrysler's becoming affiliated with a finance company from expiring prior to January 1, 1942. Appeals by the defendants from this order were dismissed by this Court on December 8, 1941 "for want of a quorum of Justices qualified to sit" and a petition for rehearing was denied on January 5, 1942 (*Chrysler Corp.* v. *United States*, No. 40, this Term).

The Government's second motion for modification was filed on December 22, 1941, after prior service on appellants and notice of hearing (R. 57, 58). The motion prayed that the second paragraph of ¶ 12, as modified, be modified by changing the date set forth therein from January 1, 1942, to January 1, 1943 (R. 61–62). Appellants answered, denying most of the allegations of the motion (R. 63–67). At the hearing the United States introduced certain documentary evidence in support of its motion [2] and the court, at appellants' request, continued the hearing to February 16, 1942, to

[2] This evidence (R. 67–153) consisted of certified copies of the pleadings, motions, stipulations, and orders of the court in the civil proceeding brought by the United States in the Northern District of Illinois to compel General Motors to dispose of its General Motors Acceptance Corporation stock.

enable them to produce their evidence (R. 153–154). At the continued hearing appellants failed to offer any proof and the court, after hearing argument, filed its findings of fact and conclusions of law and entered a decree making the change in the consent decree requested in the Government's motion (R. 154–157).

Certain facts concerning (1) the circumstances under which the consent decree was entered, (2) the charges made in the bill of complaint on which this decree is based, and (3) the general scope and nature of the decree are believed to be pertinent to the issues raised by the present appeal and are set forth below.

THE CIRCUMSTANCES UNDER WHICH THE CONSENT DECREE WAS ENTERED

Three indictments were returned in the court below on May 27, 1938, one against appellants and Commercial Credit and its subsidiaries, one against Ford Motor Company and certain finance companies affiliated with it, and the third against General Motors and its subsidiary finance company, General Motors Acceptance Corporation (referred to herein as G. M. A. C.).[2] Each of these indict-

[2] Since a court may take judicial notice of its own records (*United States* v. *California Cooperative Canneries*, 279 U. S. 553, 555; *Aspen Mining & Smelting Co.* v. *Billings*, 150 U. S. 31, 38), the above proceedings were within the judicial notice of the district court.

ments charged a conspiracy to restrain interstate commerce in automobiles produced by the defendant manufacturer by excluding as far as possible all finance companies other than the company affiliated with the manufacturer from the business of financing such interstate commerce. Each indictment charged that, pursuant to such conspiracy, the manufacturer had given various specified special services, facilities, and preferences to its affiliated finance company and had coerced its dealers, in various specified ways, to use the services of the affiliate.

After the Chrysler group of defendants and the Ford group of defendants had agreed to the entry of decrees satisfactory to the Government, it filed on November 7, 1938, a bill in equity against each group of defendants charging violation of Section 1 of the Sherman Act. On the day these bills were filed, the respective defendants filed their answers and a form of consent decree was presented to the court which the court, after a hearing,[1] entered on November 15, 1938. (See R. 15, 24.)

THE CHARGES MADE IN THE BILL OF COMPLAINT FILED AGAINST APPELLANTS

The bill of complaint filed against appellants (and Commercial Credit and its subsidiaries) charges that General Motors, Chrysler, and Ford produce about 90% of all the automobiles manu-

[1] See *Chrysler Corp.* v. *United States*, No. 40, this Term, Record, p. 109.

factured in this country; that each of these manufacturers markets its cars in the same manner; that financing is essential to such marketing; and that each has engaged in a parallel, though separate, conspiracy with its affiliated finance company to exclude other finance companies from the business of financing its cars in interstate commerce (R. 4–8). The bill alleges:

Each of these three manufacturers sells its cars to dealers, and through them to the general public, and requires cash payment, prior to delivery, for all cars sold (R. 5–6). The great majority of the dealers must resort to finance companies to obtain the funds required for these advance cash payments and finance companies likewise supply the funds for retail purchasers when they buy, as they usually do, partly on credit (R. 6–7). During the three years 1935–1937 such financing has amounted to about $5,500,000,000 in the case of dealer purchases and to about $6,000,000,000 in the case of retail purchasers (R. 7–8). Although there are some 375 independent finance companies, the finance affiliates of the "Big Three" have obtained over 80% of the business of financing both dealer and retail purchases (*ibid.*).

The bill also alleges that, for the purpose of effectuating the conspiracy charged therein, Chrysler has in various specified ways coerced its dealers to use the services of Commercial Credit and has granted that concern numerous favors and privileges denied to other finance companies (R. 8–12).

THE GENERAL NATURE AND SCOPE OF THE CONSENT DECREE

All of the prohibitions of the decree directed against Chrysler are found in paragraphs 6 and 12.[5] Paragraph 12, as previously stated (*supra*, p. 4), bars it from acquiring any interest in a finance company. Paragraph 6 contains detailed injunctive provisions against Chrysler's coercing dealers to use the services of any particular finance company and against Chrysler's granting special favors to any such company (R. 26–29, 37). The paragraph provides, however, that Chrysler may grant certain advantages to any "registered finance company" (R. 27, 28, 35–36). Subparagraph (j) of ¶ 6 authorizes any finance company to become "registered" by filing with the court in the same equity proceeding a statement that it will conform to the detailed rules for conducting its business which are set forth in this subparagraph (R. 29–34).

Paragraph 7 imposes certain inhibitions upon Commercial Credit which are correlative to some of those imposed upon Chrysler (R. 37–38).

A striking feature of the decree is that, while all the foregoing prohibitions are presently effective, their ultimate binding effect is made

[5] Paragraph 9 (R. 39), providing that the defendants shall not do in combination any act which the decree forbids or omit any act which it requires, merely makes explicit a prohibition otherwise implicit in the decree.

dependent upon the outcome of the Government's proceedings against General Motors. The decree provides (¶ 12a (1)) that if the criminal proceeding instituted against General Motors and G. M. A. C. on May 27, 1938, does not terminate in their conviction, "every" provision of the decree shall be forthwith suspended until such time as substantially identical requirements shall be imposed by decree upon General Motors and G. M. A. C. (R. 41). The decree also provides (¶ 12a (2), (3)) that following such conviction, or following entry of a decree against General Motors not subject to further review, or on January 1, 1940, whichever is earliest, the defendants shall be entitled to obtain a suspension of every requirement of paragraph 6 to the extent that it is not then imposed, and until it shall be imposed, by decree upon General Motors (R. 41–43).[6] For the purpose of this provision a verdict of guilty is to be deemed "the equivalent of a decree" against any agreement, act, or practice which the trial court in the criminal proceeding against General Motors has held, in its instructions to the jury, to constitute a proper basis for a verdict of guilty (R. 41–42).

Paragraph 12a thus provides for bringing the

---

[6] As to subparagraphs (a), (b), (c), and (g) of paragraph 6, the right to obtain such suspension is qualified by the further requirement that the defendants show to the satisfaction of the court that General Motors or its subsidiaries is performing some agreement, act, or practice prohibited thereunder (R. 43).

prohibitions against dealer coercion and finance company preferences into conformity with the results achieved in the Government's litigation against General Motors and the paragraph also provides for relief from these prohibitions unless the practices prohibited have, by a specified date, been adjudicated as illegal in the General Motors litigation. In like manner, the second paragraph of ¶ 12, which is here involved, grants Chrysler relief from the prohibition against affiliation with a finance company unless the Government in its civil litigation against General Motors (in which alone affiliation could be prohibited) obtains, by a specified date, a final adjudication divorcing it from G. M. A. C. and forbidding further affiliation (*supra*, p. 4).

GROUNDS FOR MODIFYING THE DECREE SET FORTH IN THE GOVERNMENT'S MOTION

The Government's motion to modify the decree so as to continue the injunction against affiliation until January 1, 1943, set forth the following facts as grounds for the relief requested:

The primary purpose of the provisions of the decree relating to affiliation was to prohibit affiliation between Chrysler and any finance company, unless, as a condition subsequent, it developed in the Government's litigation against General Motors, that the United States, under the Sherman Act, could not enjoin affiliation between an automobile manufacturer and a finance company even

though affiliation had been an instrumentality and means for imposing restraints of trade of the kind charged in the bill of complaint filed against Chrysler and Commercial Credit (R. 59). A subsidiary purpose of these provisions was to protect the defendants against undue delay on the part of the Government in prosecuting its test case against General Motors, by providing that unless such proceeding had been successfully concluded by January 1, 1941, the prohibition against affiliation should lapse (R. 59–60). The United States has not been guilty of undue delay or laches in prosecuting its proceeding to divorce General Motors and G. M. A. C. but the proceeding cannot be finally concluded by January 1, 1942 (R. 60–61). One of the essential purposes of the decree will be defeated if the bar against affiliation be allowed to lapse prior to final determination of the pending action against General Motors (R. 60).

The motion sets forth (R. 61) that authority to grant the relief requested is conferred both by general equity principles and by the express provisions of ¶ 14 of the decree, which authorize any party to the decree to apply to the court at any time for "modification" of the decree (R. 44).

THE DISTRICT COURT'S FINDINGS AND CONCLUSIONS

The district court, before entering a decree modifying the consent decree by continuing the ban against affiliation with a finance company until January 1, 1943, made findings of facts and stated

separately its conclusions of law. Among the facts which the court found were: The provisions of ¶ 12 of the consent decree "were framed upon the basis that the ultimate rights of the parties thereunder should be determined by" the Government's civil antitrust proceeding against General Motors; "time was not of the essence with respect to lapse of the bar against affiliation"; the Government has proceeded "diligently and expeditiously" in its suit to divorce G. M. A. C. from General Motors; "further extension of the bar against affiliation will not impose a serious burden upon defendants" (R. 155–156).

The court concluded as a matter of law that it had jurisdiction to entertain the Government's motion and to make a proper order pursuant thereto and that the purpose and intent of the decree will be carried out if Chrysler is given the opportunity to propose at any time a plan for the acquisition of a finance company and to make a showing that such plan is necessary to prevent Chrysler "from being put at a competitive disadvantage during the pendency of" the Government's civil litigation against General Motors (R. 156).

SUMMARY OF ARGUMENT

There is ample support for the district court's finding that the consent decree was framed upon the basis that the ultimate rights of the parties respecting the prohibition against affiliation should be

determined by the outcome of the Government's proceeding to end the existing affiliation between General Motors and G. M. A. C. When the terms of the decree were being negotiated both Chrysler (and its affiliated finance company) and General Motors (and its affiliate, G. M. A. C.) were under indictment charged with having engaged in parallel but separate conspiracies in restraint of trade in violation of the Sherman Act. The consent decree entered against appellants gives comprehensive injunctive relief against the illegal conduct with which they were charged but the decree provides that its prohibitions shall later be adjusted to accord with the results achieved in the Government's litigation against General Motors and G. M. A. C. By so framing the decree, the parties provided that when the legal issues raised by the Government's charges were determined in the General Motors litigation, the decree against appellants would give effect to such determinations. They also thereby provided that the leading competitors, charged with the same illegal conduct, should ultimately be subjected to the same injunctive restraints.

The district court found that the parties did not intend to make time of the essence when they provided that the prohibition against affiliation should terminate on a specified date unless at that time divorcement of G. M. A. C. from General Motors had been finally decreed. Appellants' contention that the parties intended to make time of the

essence means that they intended to make the ban against affiliation dependent upon a gamble as to whether or not the divorcement proceeding against General Motors would be concluded by a given date. Appellants, however, concede that ending affiliation was a "principal purpose" of the Government's attack, and the bill of complaint on which the decree is based and the decree itself both show that the question of affiliation was regarded as of crucial importance. We therefore submit that it cannot reasonably be assumed that the purpose was to dispose of the question of affiliation on an essentially frivolous basis.

The district court's findings as to purpose do not make it necessary to treat the date specification in ¶ 12 as without effect and meaningless. Under its findings, the date specification would subject the Government to the considerable hazard involved in successfully procuring modification of the decree if it failed to conclude the divorcement proceeding by the given date. The specification therefore had the important effect of putting the Government under pressure to prosecute the divorcement proceeding diligently.

Material changes have occurred since entry of the decree which justify modification to keep alive the ban against affiliation. Questions which, because they were unsettled when the decree was entered, materially influenced the framing of the decree,

have since been set at rest. For example, it is settled that the conduct charged against appellants constituted a violation of the Sherman Act and that appellants will be permanently bound by the various prohibitions directed against coercive or discriminatory practices. In addition, the only reason advanced by appellants for viewing time as of the essence has, by reason of a radical change in conditions, become wholly inoperative. The reason so advanced is that Chrysler is put at a serious competitive disadvantage during such time as General Motors has, and Chrysler has not, a finance affiliate, and that therefore a definite time limit on the duration of this disadvantage was intended to be fixed. However, prior to the decree of modification which is here in issue, all manufacture of automobiles had been stopped by Government order. Obviously affiliation is not a competitive factor at a time when no new cars are being manufactured.

The Government has, as the district court found, prosecuted the proceedings against General Motors diligently and expeditiously. Accordingly, appellants cannot set up Government laches as a defense to the present action.

ARGUMENT

THE MODIFICATION IN THE DECREE MADE BY THE DISTRICT COURT SERVED TO EFFECTUATE ITS PURPOSES UNDER THE CHANGED CONDITIONS THEN EXISTING AND WAS THEREFORE WARRANTED

A. PRINCIPLES GOVERNING MODIFICATION OF A CONSENT DECREE

Appellants do not deny that the district court had the power to modify the decree which it had entered on November 15, 1938. Not only does the decree contain an express reservation of such power (R. 44) but, apart from this reservation, power to modify was vested in the court "by force of principles inherent in the jurisdiction of the chancery. A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need." *United States* v. *Swift & Co.*, 286 U. S. 106, 114. And in *Ladner* v. *Siegel*, 298 Pa. St. 487, one of the cases cited as authority in the *Swift* case, the court said (p. 497) that a preventive injunction may be modified if the court which granted it believes that "the ends of justice would be served by a modification."

Appellants therefore do not contend that the decree of November 15, 1938, is immune from modification. Their contention is that facts sufficient to justify the change which the district court made were neither alleged nor proved and they cite *United States* v. *Swift & Co.*, 286 U. S. 106, as laying down the rule that no change wil lbe made in a consent decree unless the moving party convincingly

shows that the decree, due to changes in conditions occurring since its entry, imposes on him materially greater burdens than those contemplated when the decree was entered.

In the *Swift* case the issue was whether the facts before the district court warranted it in striking down, at the defendants' request, one of the major prohibitions imposed by the decree. The grounds upon which the defendants requested this relief were that changes in economic and competitive conditions occurring subsequent to the decree (a) had increased the burden of the prohibition in question and (b) had eliminated danger of the evils which the prohibition was designed to prevent. This Court, finding that the proof failed to establish either of these propositions, refused to modify the decree.

The question which the Court deemed controlling in the *Swift* case was whether the objectives of the prohibition which the defendants sought to have eliminated would be weakened or obstructed by striking down the prohibition. The Court inquired into these objectives and its refusal to modify the decree was chiefly grounded upon the conclusion that no material change in the conditions which had led to adoption of the prohibition had been shown (286 U. S., 106, 115–119). The Court, having reached this conclusion, also considered the defendants' plea that changed conditions had made the decree oppressive in its effect. The Court in rejecting this plea said (p. 119):

> No doubt the defendants will be better off if the injunction is relaxed, but they are not suffering hardship so extreme and unexpected as to justify us in saying that they are the victims of oppression. Nothing less than a clear showing of grievous wrong evoked by new and unforeseen conditions should lead us to change what was decreed after years of litigation with the consent of all concerned.

The present appellants heavily rely upon the last sentence in the above quotation. But it is directed at merely one of the factors open for consideration when modification of a consent decree is requested. It in no way qualifies the fact that the consideration given major emphasis in the opinion was whether the proposed change in the decree would promote, or whether on the contrary it might seriously impair, attainment of the objectives of the original decree.

In the *Swift* case the defendants were seeking modification. We do not contend that different principles apply where, as here, the moving party is the Government. We concede that in either case the moving party must show that the change which it requests will promote the objectives which the court and the parties had in mind at the time the decree was entered. Nevertheless, a defendant seeking escape from obligations to which it has assented may well be held to a stricter showing than where the Government seeks alteration in the terms

of a consent decree. A defendant so seeking escape is to be regarded as one whose wrongdoing has led to the imposition of certain restraints and these restraints are regarded as the relief which the court and parties deemed appropriate to prevent recurrence of wrongdoing.[1] The Government, on the other hand, brings a Sherman Act proceeding in order to vindicate a public right, by securing adherence to the requirements of the statute. "Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved." *Virginian Ry. Co.* v. *System Federation No. 40,* 300 U. S. 515, 552.

Accordingly, if the Government, in moving for change in a consent decree, shows that circumstances have arisen which will bring about a defeat of its purposes unless the requested change is made, this would appear to establish at least a prima facie case for modification.

---

[1] This is so although the decree contains a recital that it shall not constitute an adjudication that the defendant has violated the law. There was such a recital in the decree in the *Swift* case (see p. 111), but the Court there said (p. 120) that what had been decreed with the consent of all concerned would not lightly be undone "at the suit of the offenders."

B. THE DISTRICT COURT PROPERLY MODIFIED THE DECREE IF ITS FINDINGS AS TO THE PURPOSES OF THE ORIGINAL DECREE ARE VALID

The original decree entered in this case bars Chrysler from acquiring an interest in any finance company. It also provides that if a final decree requiring General Motors to dispose of all its interest in G. M. A. C. has not been entered by January 1, 1941, this prohibition shall lapse. The same district judge who, after a hearing, entered the original decree has found that the purpose of these provisions was that the ultimate rights of the parties respecting affiliation should "be determined by" the outcome of the Government's proceeding to terminate General Motors' affiliation with its subsidiary finance company, G. M. A. C.; that time was "not of the essence" with respect to lapse of the bar against affiliation; that the Government has not been guilty of laches in prosecuting its civil proceeding against General Motors; that continuation of the bar against affiliation during 1942 will not seriously burden the defendants.

Appellants' entire argument is directed toward the alleged error in these findings. They do not seem to question the propriety of the change in the decree made by the district court if, in fact, its findings are correct. In any event, there can be no doubt as to the propriety of the court's action, assuming the validity of its findings. Upon this assumption, enlargement of the period during

which affiliation is barred merely adapts the provisions of the decree to circumstances which have arisen since its entry, so as to prevent defeat of its objectives through adherence to the letter of the decree. Plainly, in this situation "the ends of justice would be served by a modification" (*Ladner* v. *Siegel*, 298 Pa. St. 487, 497).

C. THE FACTS BEFORE THE DISTRICT COURT AMPLY SUPPORT ITS FINDINGS AS TO PURPOSE

Appellants contend (Br., pp. 11–14) that the language of the provision as to lapse of the bar against affiliation is clear and unambiguous, that the court may therefore not look beyond the face of this provision to ascertain purpose, and that, since nothing appearing on the face of the provision supports the district court's findings as to purpose, these findings are erroneous.

This contention might be sound if the issue here were the proper construction of the meaning of the provision of the decree relating to lapse of the bar against affiliation. But the issue here is not what this provision means but what was the objective which the court and the parties intended to achieve when this provision was adopted. In ascertaining such objective the court, we submit, is not compelled to confine its consideration to this particular provision, which forms an integral part of a decree containing numerous interrelated and supplementary provisions.

It is elementary that a court determines the purposes of a statute from an examination of its provisions in their entirety and from such evidence as to purpose as legislative history may disclose. So here, in determining purpose, it is proper to consider the circumstances under which the decree was entered, its scope and structure as a whole, and the evils which the decree was designed to prevent as these are disclosed by the allegations of the bill of complaint upon which the decree is based (*United States* v. *Swift & Co.*, 286 U. S. 106, 115–116).[8]

In determining the purpose of the affiliation provisions of the present decree it is necessary to keep in mind that at the time its terms were being negotiated each of the three leading manufacturers of automobiles was under indictment for violation of the Sherman Act. Each of these indictments, charged the same kind of unlawful conduct, namely,

---

[8] The fact that the defendants in their answers to the bill traversed its charges (R. 15) and that the decree recites that it shall not constitute an adjudication that the defendants had violated any law (R. 24) does not alter the fact that the parties agreed that the decree should be entered to give relief against, not abstract or unknown wrongdoing, but the specific unlawful conduct charged in the bill. In the *Swift* case (see p. 111) the charges of the bill were likewise traversed and there was a like recital in the decree.

The jurisdiction of the court in entering a consent decree is conferred by and rests upon the allegations of the bill of complaint. *Swift & Co.* v. *United States*, 276 U. S. 311, 326, 327, 329.

a conspiracy between the defendant manufacturer and a finance company affiliated with it to exclude other finance companies from financing interstate commerce in the manufacturer's cars, and each charged effectuation of the conspiracy by the same coercive and discriminatory practices (*supra*, pp. 6–7). Two of the manufacturers were willing to assent to decrees giving relief against the restraints of trade charged in these indictments, but the consent decree manifests on its face that this assent was subject to the condition that the restraints imposed should fall unless the Government succeeded in later procuring like relief against their principal competitor, General Motors (*supra*, pp. 7, 9–11).

This basis for framing the decree was reasonable from the standpoint of all concerned. The decree was to be entered without submitting the issues raised by the Government's charges to the test of litigation, but it was contemplated that the Government's proceedings against General Motors would provide such test. Accordingly, the decree provides, in substance, that its prohibitions shall later be adjusted to accord with the results achieved in the litigation against General Motors. Such provision was equitable to all concerned because it would lead to imposition of like legal restraints upon the three leading units in the industry, each of which was charged with like illegal conduct.

In a decree framed upon this basis appellants were entitled to protection against undue delay in

the prosecution of the proceedings against General Motors. Such protection might have been given by providing for suspension or termination of the prohibitions upon a showing of unreasonable delay by the Government in prosecuting these proceedings.[9] Another method of affording such protection, and the one actually adopted, was to set up a sort of timetable for the proceedings against General Motors. In the case of the prohibitions against coercive and discriminatory practices, the date set was January 1, 1940. If by that date General Motors had not been convicted in the criminal proceeding or a decree not subject to further review had not been entered against it, these prohibitions were to be suspended (*supra*, p. 10). In the case of the prohibition against affiliation, the date set was January 1, 1941. If by that date a decree not subject to further review had not been entered ending General Motors' affiliation with G. M. A. C., the prohibition was to be no longer operative.

The provision that the bar against affiliation shall terminate on a specified date if divorcement of General Motors and G. M. A. C. has not then been finally decreed is not inconsistent with the view that the purpose of the parties was to have the bar against affiliation governed by the outcome of the divorcement proceeding against General Motors. There is no inconsistency if the parties,

---

[9] See *Chrysler Corp.* v. *United States*, No. 40, this Term, Record, p. 111.

in framing the decree, acted upon the belief that General Motors would either assent to a decree ending its affiliation with G. M. A. C. or would assent to a decree disposing of all issues other than that of affiliation, and that its right to maintain a finance-company subsidiary would therefore be finally determined prior to January 1, 1941.[10] The parties may have also acted upon the belief that if on that date the Government had successfully prosecuted the criminal proceeding and had instituted a divorcement proceeding which had not been finally determined, the decree would be modified either with the assent of the defendants[11] or by court order so as to prevent lapse of the bar against affiliation prior to final determination of that proceeding.

The district court's view as to the purpose of the affiliation provisions does not make it necessary to treat as nugatory the provision in the decree that the bar against affiliation should expire on January 1, 1941, if divorcement of General

[10] If the litigation against General Motors had been confined to a civil proceeding to compel divorcement, something over two years would be a reasonable time in which to obtain final decision. Trial of the criminal proceeding against General Motors was completed in November 1939 (R. 84A–84D). An equally prompt trial decision in the civil proceeding would have allowed more than a year to obtain decision on direct appeal to this Court.

[11] The Ford defendants, against whom a like consent decree was entered, assented to continuation of the bar against affiliation. See Record in *Chrysler Corp.* v. *United States*, No. 40, this Term, pp. 67–68.

Motors and G. M. A. C. had not then been decreed. Under the district court's findings of purpose this provision would subject the Government to the considerable hazard involved in procuring modification of the decree if it failed to obtain divorcement by the specified date. The direct and indirect effect of the provision, therefore, would be to put the Government under pressure to expedite its proceedings against General Motors.

The view of the district court that the primary purpose of the decree was to make Chrysler's right to be free from the bar against affiliation dependent upon nonperformance of the specified act, (*i. e.*, obtaining a final decree divorcing General Motors and G. M. A. C.) rather than upon the time of performance, is in accord with well-settled rules of contract interpretation. Courts of equity in this country as well as in England "have treated stipulations as to time as subsidiary and of comparatively little importance, unless either the language of the parties or the nature of the case imperatively indicated that the date of performance was vital." 3 Williston, *Contracts* (1936), sec. 845. And "where an express condition is the performance of an act, and it is provided that the act shall be done at a certain time, an interpretation will be favored which makes only the act the condition and the provision as to time merely a collateral stipulation" (*ibid.*).[12] In many types of

[12] See *Restatement of Contracts*, secs. 250, 276.

contracts, such as those for the payment of money, building contracts, contracts of service, and contracts for the sale of land, time is not ordinarily of the essence (*id.*, secs. 848–850, 852).

Appellants' contention is that the purpose of the affiliation provisions was that nonperformance of the specified act on January 1, 1941, should operate as a final and absolute release of Chrysler from the bar against affiliation, irrespective of what the circumstances were at that time. Appellants' contention, in short, is that the bar against affiliation was a purely gambling proposition—if divorcement of General Motors and G. M. A. C. had been finally decreed by January 1, 1941, the ban on affiliation was to be permanent; if not, the ban was to be merely temporary. This view means that if on January 1, 1941, the illegality of a conspiracy such as that charged in the bill of complaint on which the consent decree was entered had been settled by final victory for the Government in the criminal proceeding against General Motors and if on January 1, 1941, there was outstanding a decree directing divorcement of G. M. A. C. from General Motors and appeal from such decree had been argued before this Court and an opinion delivered affirming the decree but the mandate had not gone down, Chrysler nevertheless was to be released from the prohibition against affiliation. This is the position appellants must defend. Nothing short of it will sustain their contention as to purpose.

To view the decree as dealing with affiliation on such a basis would be reasonable only if it appeared that the parties to the decree regarded the question of affiliation or nonaffiliation as of merely minor or incidental importance. That this was not the case is expressly conceded by appellants. They state (Br., pp. 16–17):

> The heart of the Government's attack on Chrysler, Ford, and General Motors in all these finance company cases was the great benefit to these motor companies of having finance companies as affiliates. *A principal purpose of the Government's attack was to end the affiliation.* [Italics ours.]

Appellants' contention therefore reduces to this: although ending affiliation was a principal purpose of the Government's attack, the parties intended to provide for disposition of this matter on a gamble as to whether the final decree against General Motors could be obtained within the specified time limit.

Manifestly, the parties did not intend to dispose of the question of affiliation on such a frivolous basis. The bill of complaint shows that affiliation was regarded as the root of the illegal restraints of trade charged therein. It charged that General Motors, Chrysler, and Ford was each affiliated with a finance company (R. 6–7) and that each had conspired with its affiliate to restrain interstate commerce in the manufacturer's cars by excluding other finance companies from the financing of such

commerce (R. 8). It thus appears from the bill that affiliation had led to a common pattern of behavior and that affiliation was deemed an inducing and contributory cause of the restraints alleged. The decree strikes down both the symptoms of the evil, coercive and discrimiatory practices, and the source of the evil, affiliation. The decree also provides that both types of prohibition shall fall unless the Government's right to such relief is upheld (either by the defendants' consent or by judicial decision) in the General Motors litigation, but it is hardly reasonable to suppose that, in addition, the parties intended that the permanency of the ban against affiliation—the root of the evil—should be determined by a mere gamble on how rapidly the test litigation against General Motors was brought to a conclusion.

In addition, the decree contains elaborate provisions designed to assure fair and free competition in the business of financing Chrysler's cars (R. 26–37). Affiliation between Chrysler and a finance company seems incompatible with attainment of this end. Since retention of Chrysler's good will is of supreme importance to its dealers,[13] many of them would, even without coercion, use the services of any finance company with which Chrysler was affiliated. Moreover, with affiliation existing, Chrys-

[13] The bill of complaint alleges that the Chrysler dealer contracts are subject to cancellation at the will of Chrysler (R. 5).

ler would be under the constant incentive to give the affiliate favored treatment, action which the decree seeks to prevent by various specific prohibitions and requirements (R. 26–29). Since, therefore, affiliation would materially weaken the effectiveness of the decree in achieving its objective of fair dealing and equal opportunity for all in the financing of Chrysler cars, it cannot reasonably be assumed that the intent was to have the permanency of the ban against affiliation abide the result of a gamble.

Appellants suggest (Br., p. 18) that even if the bar against affiliation should fall, the interests of the Government will be sufficiently protected since it will not be barred from attacking in an independent proceeding any new affiliation which may later be formed. But insofar as the Government's right to relief against affiliation would be buttressed or enlarged by showing that affiliation had been linked with the illegal conspiracy charged in the Government's bill of complaint in this case, the Government would, under appellants' interpretation of purpose, be relinquishing the right to make this showing in exchange for a prohibition of uncertain duration. It is no answer to say that the decree leaves the Government free to litigate the legality of appellants' future acts or conduct. This is no more than the right and duty to enforce the statute which is necessarily vested in the Government at all times.

Appellants attempt to justify an alleged intent to free Chrysler on a given date from the prohibition against affiliation by urging (Br., pp. 17–18) that the decree put Chrysler at a serious competitive disadvantage with General Motors during the period between entry of the decree and such time as General Motors' affiliation with G. M. A. C. might be terminated. The attempted showing is, we submit, far from convincing. No showing is made that affiliation gives General Motors a competitive advantage in the sale of its cars. The fact that any earnings of its finance company during this period would accrue to General Motors might or might not increase its over-all earnings.[14] But assuming that affiliation in this period increased over-all earnings, this has no more effect on competition in the sale of automobiles than would ownership by General Motors, but not by Chrysler, of

[14] Chrysler disposed of its Commercial Credit stock in or about February 1938 (R. 19), which was after a grand jury investigation of its practices had been instituted (see Record in *Chrysler Corp.* v. *United States*, No. 40, this Term, pp. 86–87). The high and low price of Commercial Credit common stock in January–February 1938 was 38¾–31⅛, with the midway price thus 35 (*Commercial and Financial Chronicle*, vol. 146, p. 1504). The 1942 high and low price for this stock is 18⅞–16⅛, with the midway price thus 17½ (*New York Times*, April 20, 1942). In other words, if Chrysler had retained its 50,000 shares of Commercial Credit stock (R. 17), it would, on the basis of market value, have suffered a loss of $875,000, representing a 50% asset impairment.

a company manufacturing electric refrigerators, or airplanes, or any other product.

If other than competitive factors are assumed to have been in the minds of the parties in framing the decree, then it should be noted that substantial advantages accrued to Chrysler from its acceptance of the decree. By such acceptance it escaped the heavy direct and indirect costs of a criminal trial as well as of an equity trial, burdens which General Motors faced and, in part, still faces. Chrysler's acceptance of the consent decree also enabled it to escape entry of a judgment that it had violated the Sherman Act, a judgment which would be prima facie evidence against it if sued for triple damages under Section 7 of the Sherman Act on account of injury resulting from its violation of the statute.[15]

D. MATERIAL CHANGES IN CIRCUMSTANCES AND CONDITIONS OCCURRING SINCE ENTRY OF THE DECREE JUSTIFY THE DECREE OF MODIFICATION ENTERED BY THE DISTRICT COURT

When the district court acted upon the Government's motion for modification, the circumstances existing at the time the consent decree was entered had materially changed. In the interim the question whether the conspiracy charged against appellants infringed the prohibitions of the Sherman Act had been decided affirmatively by the Circuit

[15] See Section 5 of the Clayton Act, 38 Stat. 731, 15 U. S. C., sec. 16.

Court of Appeals to which appeal lay and this Court had twice refused to review that decision. *United States* v. *General Motors Corp.*, 121 F. (2d) 376, certiorari denied October 13, 1941, rehearing denied November 10, 1941, No. 352, this Term. By reason of these facts, the question which was open when the decree was entered, whether Chrysler would be permanently bound by the comprehensive prohibitions and requirements of ¶ 6 of the decree, had also been decided in the affirmative.[16] It follows that events occurring since entry of the decree had vitally altered the situation, in that matters which the parties deemed to be of the highest moment and which were merely conjectural when the decree was entered, had subsequently been converted into certainties.

A further change of great consequence has occurred since the entry of the decree. Appellants (Br., p. 17) offer only one reason or explanation for the

[16] It is true that the decree still left open certain contingent, future, or conjectural avenues of escape. These were: (a) To apply successfully for modification of the decree (¶ 14, R. 44); (b) To apply successfully to the court, after November 15, 1942, for vacation of the decree in whole or in part (¶ 18, R. 47); (c) To obtain a suspension of requirements of ¶ 6 which had not been ruled to be illegal in the criminal proceeding (¶ 12a, R. 42–43); (d) To show that a competitor (other than General Motors or Ford) had sold 25% as many automobiles as Chrysler, that practices of such competitor, prohibited by the decree, put Chrysler at a competitive disadvantage, and that the United States had not proceeded diligently to adjudicate the illegality of such practices (¶ 15, R. 45).

alleged purpose to give Chrysler an absolute release on a specified date provided General Motors' affiliation with G. M. A. C. had not then been finally prohibited, namely, that since to prohibit Chrysler from affiliating at a time when General Motors is not so prohibited imposes a competitive burden on Chrysler, a definite time limit for the duration of this burden was intended to be fixed. While the alleged competitive burden appears to be without substance (*supra*, pp. 32–33), what is now important is that a radical change in conditions occurring since entry of the decree has eliminated any possibility of putting Chrysler at a competitive disadvantage by extending the ban against affiliation to January 1, 1943.

Affiliation with a finance company can confer a competitive advantage on a manufacturer of automobiles only if automobiles are currently manufactured and sold. But prior to the decree of modification entered by the district court on February 16, 1942, all manufacture of passenger automobiles and light trucks had ceased pursuant to orders issued on January 21, 1942, by the Director of Priorities of the Office of Production Management (F. R. Docs. 42–636, 42–637, 7 F. R. 473). Even on appellants' view as to purpose, therefore, continuation of the ban against affiliation is not in conflict with the intended objective.

Appellants, recognizing that their attack on the district court's decree of modification is seriously undermined by the termination of automobile

manufacture, urge (Br., pp. 18–19) that an affiliated finance company might extend aid to hard-pressed dealers which otherwise might not be available to them; that affiliation thus provides the means for preserving the manufacturer's dealer organization, its "most priceless treasure." We submit that the implication that Chrysler could not aid dealers just as easily itself as through a finance affiliate is wholly fallacious. Chrysler may, if it so chooses, repurchase cars now in the hands of its dealers, leaving them as custodians of the cars with power of resale. Such an arrangement and others that could be made would be of at least as great assistance to dealers as extension of credit by a finance affiliate.

The district court's interpretation of the decree fully safeguards Chrysler's interests in the event that continuation of the bar against affiliation should prove to be a competitive disadvantage. The court, on the basis of the power to modify conferred by ¶ 14 of the decree, ruled as a matter of law (R. 156):

> That the purpose and intent of the decree will be carried out if Chrysler is given the opportunity at any future time to propose a plan for the acquisition of a finance company, and to make a showing that such plan is necessary to prevent Chrysler Corporation from being put at a competitive disadvantage during the pendency of complainant's civil litigation against General Motors Corporation, et al.

E. THE GOVERNMENT HAS NOT BEEN GUILTY OF LACHES IN PROSECUTING ITS PROCEEDINGS AGAINST GENERAL MOTORS

Notwithstanding the considerations to which we have referred (*supra*, pp. 23–36), possibly the district court would have been justified in refusing to extend the bar against affiliation if the Government had been guilty of laches in prosecuting its proceeding to divorce G. M. A. C. from General Motors. The district court found that this was not the case, that the Government had proceeded "diligently and expeditiously" in this matter (R. 156). The facts fully sustain this finding.

It was obviously neither feasible nor in the public interest to prosecute the criminal and civil cases against General Motors simultaneously. Since they were based on the same conspiracy charge, simultaneous proceedings would have involved the expense and burden of trying the same issue twice.[17] This could be avoided by prior trial of the criminal cause since judgments of conviction there would render the question of conspiracy *res judicata* in the civil proceeding (*Local 167* v. *United States*, 291 U. S. 293, 294, 295, 298–299). The fact that the court in the civil proceeding granted continuances over the Government's opposition even after the Circuit Court of Appeals had affirmed the criminal

[17] The burden and expense of such double trial is indicated by the size of the record in the criminal case. The record as presented to this Court on petition for certiorari was over 4,000 pages (*General Motors Corp.* v. *United States*, No. 352, this Term).

convictions [18] sufficiently shows that trial of the civil case was not delayed by not instituting that action until October 1940 (R. 68, 85) or by the Government's assent to extending the defendants' time for pleading pending decision by the Circuit Court of Appeals on the appeal from the criminal convictions (R. 91, 95–96, 97–98, 101–102, 104A, 126A).

F. THE GOVERNMENT DID NOT PURSUE THE WRONG REMEDY IN PROCEEDING BY MOTION

Appellants contend (Br., pp. 20–21) that the Government could obtain modification of the decree only by filing a supplemental complaint pursuant to Rule 15 (d) of the Rules of Civil Procedure. We submit that a motion was the proper form of proceeding. The Government was applying to the court for an order modifying the decree. Rule 7 (b) of the Rules of Civil Procedure provides: "An application to the court for an order shall be by motion." The Government's motion conformed to the requirement of this rule that the motion "shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought."

The only difference in substance between proceeding by motion and proceeding by supplemental complaint is that Rule 15 (d) of the Rules of Civil Procedure provides for securing permission of the

[18] R. 61, 131, 133, 135–136, 138, 143, 149, 153.

court, after notice to the adverse party, before filing a "supplemental pleading." But ¶ 14 of the consent decree authorizes "any of the parties to this decree to make application to the court at any time * * * for the modification" of the decree (R. 44). This provision expressly authorizing application to the court for modification of the decree rendered it unnecessary to secure the permission of the court before making such application. It was therefore wholly immaterial whether the Government designated its application for modification a motion or a supplemental complaint.

Appellants were served with notice of the motion for modification and they filed a written answer thereto (R. 57–58, 63).

CONCLUSION

It is respectfully submitted that the decree of the district court should be affirmed.

CHARLES FAHY,
Solicitor General.
THURMAN ARNOLD,
Assistant Attorney General.
CHARLES H. WESTON,
Special Assistant to the Attorney General.

APRIL 1942.

U. S. GOVERNMENT PRINTING OFFICE: 1942

p. 3.

SUPREME COURT OF THE UNITED STATES.

No. 1036.—October Term, 1941.

Chrysler Corporation, De Soto Motor Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation and Chrysler Sales Corporation, Appellants,
vs.
The United States of America.

On Appeal from the District Court of the United States for the Northern District of Indiana.

[June 1, 1942.]

Mr. Justice Byrnes delivered the opinion of the Court.

On May 27, 1938, an indictment was returned against appellants (referred to hereafter as Chrysler) and Commercial Credit Company and certain subsidiaries of the latter in the District Court for the Northern District of Indiana. Two similar indictments were returned on the same day, one against Ford Motor Company and certain finance companies affiliated with it and the other against General Motors Corporation and General Motors Acceptance Corporation, its subsidiary. The gist of each of these indictments was that the automobile manufacturer had combined and conspired with its affiliated finance company or companies to restrain trade and commerce in the wholesale and retail sale and financing of its automobiles, in violation of the Sherman Act.[1]

During the ensuing months Chrysler and Ford reached an agreement with the government that the indictments against them would be quashed and consent decrees entered. Consequently, on November 7, 1938 bills of equity were filed against Chrysler and Ford praying for injunctions against the acts complained of. Answers were filed[2] and on November 15, 1938 the consent decrees were entered.

The lengthy decree against Chrysler need not be described in detail.[3] Paragraph 6 imposed numerous specific restraints upon

[1] 26 Stat. 209, 15 U. S. C. § 1.

[2] Chrysler's answer included an allegation that it had completely terminated its affiliation with Commercial Credit Company by February, 1938.

[3] The consent decree against Ford is substantially the same.

discriminatory practices by Chrysler in favor of Commercial Credit Company.[6] Paragraph 7 imposed correlative restraints upon Commercial Credit Company in its dealings with Chrysler. Paragraph 12A contained alternative provisions depending upon the outcome of the then still pending criminal proceedings against General Motors. It provided: (1) that if those proceedings should not result in conviction every provision of this consent decree against Chrysler should be suspended until such time as a substantially identical decree should be obtained against General Motors; or (2) that upon conviction of General Motors in the criminal proceedings or upon the entry of a decree in a civil action against General Motors or upon January 1, 1940—whichever should occur first—Chrysler should be free of all restraints imposed by paragraph 6 to the extent that substantially identical restraints had not been imposed upon General Motors by the verdict of guilty or by the civil decree and until such restraints were imposed.

The question before us concerns paragraph 12, which is separate and distinct from paragraph 12A. Paragraph 12 forbade Chrysler to "make any loan to or purchase the securities of" Commercial Credit Company or any other credit company. It then provided:

"It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, *if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1941*, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in the event, nothing in this decree shall preclude the manufacturer [Chrysler] from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order or modification or suspension thereof entered pursuant to paragraph 12a . . . . [emphasis added]".

Affiliation between Chrysler and Commercial Credit Company or another finance company was thus singled out for special treatment in paragraph 12. The various restraints imposed by paragraphs 6 and 7 were subject to termination upon the contingencies described in paragraph 12A, but the prohibition against affiliation was subject to expiration upon the distinct and different contingency described in paragraph 12, *viz.*, the entry of "an effective

final order or decree not subject to further review . . . on or before January 1, 1941, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein . . . ."

Jurisdiction of the cause was retained by the District Court, in paragraph 14, for the purpose of enabling the parties to apply at any time "for such further orders and directions as may be necessary or appropriate in relation to the construction of or carrying out of this decree" or "for the modification thereof".

The criminal proceedings against General Motors resulted in conviction of the corporation on November 17, 1939. 121 F. 2d 376. General Motors appealed to the Circuit Court of Appeals for the Seventh Circuit. On May 1, 1941 that Court affirmed the conviction and on July 2, 1941 denied rehearing. A petition for certiorari was denied on October 13, 1941 (314 U. S. —). A petition for rehearing was denied on November 10, 1941. 314 U. S. —.

Meantime, a civil suit for an injunction had been instituted by the government against General Motors on October 4, 1940 in the District Court for the Northern District of Illinois. On October 26, 1940 the government agreed to an extension of time to answer to January 20, 1941. This extension of time rendered it impossible for the government to obtain "an effective final order or decree" against General Motors before January 1, 1941, as required by paragraph 12 of the consent decree against Chrysler. Accordingly, on December 17, 1940, the government filed a motion in the District Court in Indiana asking that paragraph 12 of the consent decree against Chrysler be modified by substituting "January 1, 1942" for "January 1, 1941". Chrysler opposed this motion, but on December 21, 1940 an order was entered changing the date as requested. Chrysler appealed to this Court from the order of modification, but the appeal was dismissed on December 8, 1941 for want of a quorum of Justices qualified to sit (— U. S. —) and on January 5, ~~1941~~ 1942 rehearing was denied. — U. S. —.

Pursuant to additional stipulations between the government and General Motors the time to answer the government's complaint in the civil suit in the Illinois District Court was successively extended to January 27, 1941, to May 1, 1941, to June 15, 1941, and to June 21, 1941. On the latter date, the government filed an amended complaint. By agreement the time in which to answer

this amended complaint was extended to July 15, 1941. General Motors then sought a further extension of time to answer the amended complaint, urging that the civil suit should be postponed pending a final determination of the criminal case and that it was about to petition for a writ of certiorari in the criminal case. The government refused to agree to an extension, stating that any further delay might prejudice the government in connection with its consent decree against Chrysler. The District Court nevertheless entered an order for an indefinite extension of the time in which General Motors might answer the amended complaint. On December 1, 1941 the government moved the District Court to set a day certain by which General Motors would be required to answer and otherwise plead. In the motion and in an accompanying affidavit the government explained the connection between the consent decree against Chrysler and the civil suit against General Motors. After a hearing on the motion the District Court set January 15, 1942 as the date by which General Motors would be required to answer.

The date fixed by the last mentioned order of the District Court in Illinois in the suit against General Motors created further difficulty with respect to the consent decree in the Chrysler case in the District Court of Indiana. It had now become impossible for the government to obtain "an effective final order or decree" against General Motors, within the meaning of paragraph 12 of the Chrysler consent decree, prior to January 1, 1942. On December 22, 1941, therefore, the government moved the District Court in Indiana for a second modification of paragraph 12 of the Chrysler consent decree by substituting "January 1, 1943" for "January 1, 1942". In its answer Chrysler opposed the modification. The government offered in evidence a transcript of the proceedings in the civil suit against General Motors. Hearing on the motion was continued to February 16, 1942. On that date no additional evidence was introduced, but argument of counsel was heard.

The District Court thereupon made the following findings of fact: (a) that the District Court had specifically retained jurisdiction to modify the consent decree; (b) that paragraph 12 was "framed upon the basis that the ultimate rights of the parties thereunder should be determined by the government's civil anti-trust proceedings against General Motors Corporation and affiliated companies"; (c) that "time was not of the essence with respect

to lapse of the bar against affiliation [between Chrysler and Commercial Credit Company or any other finance company]"; (d) "that to safeguard defendants against undue delay in such proceedings the decree provided for suspension of certain of its prohibitions in the event convictions were not obtained in the criminal case against General Motors Corporation by January 1, 1940"; (e) "that the decree provided for a termination of the bar against affiliation, if the civil proceedings against General Motors Corporation were not successfully concluded by a court of last resort by January 1, 1941"; (f) that a conviction had been obtained in the criminal proceedings against General Motors on November 17, 1939; (g) "that the government has proceeded diligently and expeditiously in its suit to divorce General Motors Acceptance Corporation from General Motors Corporation"; and (h) "that further extension of the bar against affiliation will not impose a serious burden upon defendants". It then concluded as a matter of law "that the purpose and intent of the decree will be carried out if Chrysler is given the opportunity at any future time to propose a plan for the acquisition of a finance company, and to make a showing that such plan is necessary to prevent Chrysler Corporation from being put at a competitive disadvantage during the pendency of complainant's civil litigation against General Motors Corporation, et al."

Upon the basis of these findings and conclusions, the District Court entered an order modifying paragraph 12 by changing the date to January 1, 1943, in compliance with the government's motion. The case is before us on direct appeal from this order. 15 U. S. C. § 29, 28 U. S. C. § 345.

It is clear that under paragraph 14 of the original decree the District Court had jurisdiction to modify it. The question is whether the change in date in paragraph 12 amounted to an abuse of this power to modify. We think that the test to be applied in answering this question is whether the change served to effectuate or to thwart the basic purpose of the original consent decree. *United States* v. *Swift & Co.*, 286 U. S. 106.

The text of the decree itself plainly reveals the nature of that purpose. It was, as stated in the District Court's findings, "that the ultimate rights of the parties thereunder should be determined by the government's civil antitrust proceedings against General Motors and affiliated companies." The time limitation was in-

serted to protect Chrysler from being placed at a competitive disadvantage in the event that the government unduly delayed the initiation and prosecution of the General Motors injunctive proceedings. The District Court found "that the government has proceeded diligently and expeditiously in its suit to divorce General Motors Acceptance Corporation from General Motors Corporation." There is room for argument that this statement is markedly generous to the government, inasmuch as the civil suit against General Motors was not instituted until almost two years after the entry of the consent decree and only three months prior to the limiting date in paragraph 12. But the finding is supported by several circumstances: the extended course of the appeals in the criminal proceedings against General Motors, for which the government was not responsible; the obvious bearing of the results in that litigation upon the method of handling the civil litigation with General Motors; and the ruling of the District Court in Illinois in July, 1941 in the General Motors civil action indefinitely extending the time to answer despite the government's objection, presumably to await the final disposition of the criminal case. In view of these considerations the finding of the court below was not unreasonable and we do not think that the government lost its right to seek a modification of the decree.

The controlling factor thus becomes whether the extension of the ban on affiliation contained in paragraph 12 places Chrysler at a competitive disadvantage. Chrysler made no showing to that effect in the District Court. The order of December 21, 1941 set the hearing for February 16, 1942 with the explanation that Chrysler had "requested a continuance in order to produce further evidence". But on February 16 no evidence was forthcoming. The record therefore reveals that Chrysler terminated its affiliation with Commercial Credit in 1938 before the consent decree was entered and does not reveal that it has since asserted any desire or intention to affiliate with Commercial Credit or with any other finance company. Moreover, we cannot be blind to the fact that the complete cessation of the manufacture of new automobiles and light trucks has drastically minimized the significance of the competitive factor.[4] Consequently there is no warrant for disturbing the finding of the court below "that further extension of the bar against affiliation

[4] See the order of January 21, 1942 of the Director of Priorities of the Office of Production Management. F. R. Docs. 41-636, 42-637, 7 F. R. 473.

will not impose a serious burden upon defendants." If Chrysler desires to affiliate with a finance company and feels that its inability to do so places it at a disadvantage with its competitors, it should make such a showing to the District Court. That court expressly declared that Chrysler was free at any time to propose a plan for affiliation and to demonstrate that such a plan is necessary to avoid unfairness.

Affirmed.

Mr. Justice ROBERTS, Mr. Justice MURPHY and Mr. Justice JACKSON took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 1036.—October Term, 1941.

Chrysler Corporation, De Soto Motor Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation and Chrysler Sales Corporation, Appellants,
vs.
The United States of America.

Appeal from the District Court of the United States for the Northern District of Indiana.

[June 1, 1942.]

Mr. Justice Frankfurter, dissenting.

In the spring of 1938 the Government instituted criminal proceedings against the three leading automobile manufacturers, Chrysler, Ford, and General Motors. For present purposes Ford may be disregarded. Each indictment charged violation of the Sherman Law arising out of the manufacturer's affiliation with a finance company and its employment of certain trade practices. Chrysler was prepared to consent to a decree prohibiting it from affiliation with any finance company, in addition to its acceptance of restraints against alleged illegal trade practices, provided, however, that the Government succeeded in obtaining similar relief against General Motors. The problem before the negotiators of the consent decree was, therefore, that of determining how long Chrysler should remain subject to the restraints imposed by the decree while General Motors, contesting the claims of the Government, refused to come to terms with it and put it to its law. As the Government recognizes in its brief here, Chrysler was "entitled to protection against undue delay in the prosecution of the proceedings against General Motors". With respect to the prohibition against affiliation, the problem was solved by providing in paragraph 12 that if the Government should not have obtained a final decree against General Motors by January 1, 1941, requiring General Motors to divest itself of all interest in its affiliated finance company, the prohibition against Chrysler would cease. This was made an "express condition" notwithstanding any other pro-

visions in the decree.[1] Obviously, it was an essential feature of the consent decree against Chrysler that the prohibition of affiliation with the finance company should result in this great competitive disadvantage only long enough to enable the Government to press its claim against General Motors to successful conclusion with all reasonable speed. The parties might have refrained from fixing any definite period, leaving the matter wholly for determination in the future and by undefined standards of reasonableness. Instead, the Government chose to specify with particularity the length of the period—more than two years—in which Chrysler would be required to bear competitive hardships resulting from the lack of the same restraints upon General Motors.

Considering the scope and nature of the decree, the interests, both public and private, with which it was dealing, and its technical draftsmanship, there can be no doubt that the precise limits of paragraph 12 were not casually or carelessly defined. Of course, the District Court had the power to modify the consent decree in

[1] The full text of Paragraph 12 is as follows:

"The Respondent Finance Company shall not pay to any automobile manufacturing company and the Manufacturer shall not obtain from any finance company any money or other thing of value as a bonus or commission on account of retail time sales paper acquired by the finance company from dealers of the Manufacturer. The Manufacturer shall not make any loan to or purchase the securities of Respondent Finance Company or any other finance company, and if it shall pay any money to Respondent Finance Company or any other finance company with the purpose or effect of inducing or enabling such finance company to offer to the dealers of the Manufacturer a lower finance charge than it would offer in the absence of such payment, it shall offer in writing to make, and if such offer is accepted it shall make, payment upon substantially similar bases, terms and conditions to every other finance company offering such lower finance charge; provided, however, that nothing in this paragraph contained shall be construed to prohibit the Manufacturer from acquiring notes, bonds, commercial paper, or other evidence of indebtedness of Respondent Finance Company or any other finance company in the open market.

"It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1941, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted."

order to effectuate its basic purposes. The fact that the decree embodied the agreement of the parties no more limited the power of the court than if it had been a contested decree. *Swift & Co.* v. *United States*, 276 U. S. 311; *United States* v. *Swift & Co.*, 286 U. S. 106, 114; *United States* v. *Int. Harvester Co.*, 274 U. S. 693. The decree itself contains an express recognition of the court's power of modification, but such a reservation plainly added nothing to the decree and subtracted nothing from the significance of terms made an express condition of the imposed restraint. The burden was still, as it always is, on the moving party—and here it was the Government—to show that circumstances justified a change in such terms. In fact, on December 17, 1940, within three weeks of the expiration of the restraint against Chrysler, the Government sought for an extension of that restraint for another year upon the grounds that the time "was by mistake of the parties underestimated." The extension was opposed but granted by the District Court. An appeal was brought here but was dismissed on December 8, 1941, "for want of a quorum of Justices qualified to sit." *Chrysler Corporation* v. *United States*, 314 U. S. 583. A week later the present proceedings were begun for a further extension. The effect of the modification sought by the Government and granted by the court below was to extend until January 1, 1943, the restrictions upon Chrysler's freedom of action which were not imposed upon its principal rival.

In order to justify a modification having such drastic business consequences, it was surely incumbent upon the Government to show that it had proceeded with all deliberate speed against General Motors. The record reveals that no such showing was made. The history of the litigation against General Motors proves that it could not have been made. Although the consent decree against Chrysler was entered on November 15, 1938, the trial in the criminal action against General Motors was not begun until October 9, 1939. This trial resulted in a conviction against General Motors on November 17, 1939. Since the trial judge did not instruct the jury that affiliation as such was unlawful, and indeed the contrary, the criminal proceeding could no longer be claimed to control the validity of the affiliation prohibited by paragraph 12 of the Chrysler decree. Consequently, it is irrelevant that the criminal proceedings against General Motors were not finally concluded until this Court denied certiorari on October 13, 1941.

But, in any event, the contingencies of review of a criminal conviction do not justify holding in abeyance an equity suit even though it concerns a related issue, when the determination of that equity suit within a time certain, to wit, January 1, 1941, explicitly defined the duration of the restraint imposed upon Chrysler. The appeal of the criminal conviction against General Motors was at last disposed of in the Circuit Court of Appeals on May 1, 1941. 121 F. 2d 376. But even then the Government did nothing to press the equity suit, indeed it promoted its further delay.

It was not until October 4, 1940, that the Government brought a civil suit in equity against General Motors. This was almost two years after the entry of the decree against Chrysler, and perhaps more important, less than three months before the date upon which the bar against Chrysler was to be lifted. Here again the record contains nothing to explain this period of inaction, when by the express terms of the decree, the duty of action was laid upon the Government and the result of such action was of obvious business importance to the status of Chrysler under its decree. Nor does the record show that the Government undertook to prevent any untoward delays in the determination of the General Motors civil suit. On the contrary, no less than six times did the Government agree to extensions of the time within which General Motors should plead. On October 26, 1940, the Government acquiesced in an extension to January 20, 1941; on January 16, 1941, in an extension to January 27, 1941; on January 24, 1941, in an extension of more than three months, to May 1, 1941; on April 21, 1941, in a further extension to June 15, 1941; and on June 13, 1941, in an additional extension to June 21, 1941. On that date the Government filed an amended complaint, and on June 28, 1941, it agreed to a further extension to July 15, 1941. On the latter date General Motors requested the court that it be given a further extension; the request recited the Government's opposition to the motion because of its effect upon the Chrysler decree. The court nevertheless granted General Motors an indefinite extension. On November 29, 1941, the Government for the first time moved that General Motors be required to file an answer or other pleading. In response to this motion the court ordered that General Motors file a pleading by January 15, 1942.

This is the background of fact in the light of which the District Court was required to judge whether the Government was equitably

entitled to impose upon Chrysler for a further period the curtailment of its freedom of action embodied in the consent decree. Relevant to its determination, also, was the fact that paragraph 12 provided only that if the Government did not obtain a final order of divorcement against General Motors by January 1, 1941, then nothing *in the decree* against Chrysler would prohibit the latter from affiliating with a finance company. Nothing in paragraph 12 gave, or even purported to give, Chrysler any immunity from the anti-trust laws after January 1, 1941. Therefore, if the decree were not modified, it would not mean that the Government would be powerless to proceed against Chrysler if the latter resumed the activities forbidden by the decree. The Government would still be free to take any action it might have taken before Chrysler consented to the decree against it.

A court of equity is not just an umpire between two litigants. In a very special sense, the public interest is in its keeping as the conscience of the law. The circumstance that one of the parties is the Government does not in itself mean that the interest which it asserts defines and comprehends the public interest which the court must vindicate. A modification of a decree requested by the Government is not *ipso facto* a modification warranted by considerations which control equity. Regard for the proper administration of justice which makes determinations depend upon proof and not upon unsupported assertions of one of the litigants is a vital aspect of the public interest. The burden obviously rested upon the Government to show good cause for disregarding an express provision in a carefully framed decree, and extending to twice its original duration the period of restraint against Chrysler. So to enlarge the burden of the decree without any such showing by the Government is a one-sided restriction on Chrysler's freedom of action, at least of its right to prove that the restricted action is innocent. Instead of exacting such proof from the Government, the District Court cast upon Chrysler the duty of showing that it would not be prejudiced if the fetters remained after the period fixed by the decree. He who seeks relief from equity has the burden of showing that he is entitled to it. It is unfair to cast upon Chrysler the burden of proving that it would not be harmed if the Government got what it wanted. As a practical business matter, Chrysler is not standing on an abstract right to devise means of financing its sales simply because it is not ready

today with arrangements for a financial corporation, and the war precludes them. Such arrangements cannot be devised overnight. It may well take a year to get them under way.

Considering, on the one hand, the drastic economic disadvantage to which Chrysler is put in being subjected to the hazard of contempt proceedings if it takes any steps toward preparing for affiliation in the future, and, on the other hand, the failure of the Government to explain the apparent lack of diligence in prosecuting the proceedings against General Motors and to show that the modification was necessary to achieve the purposes of the consent decree, I am bound to conclude that the order of the District Court, unexplained by any opinion, was not within the proper limits of its discretion.

Mr. Justice REED joins in this dissent.